

ARKANSAS SUPREME COURT

No. CR 07-1256

EILERT BERTRAND
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 17, 2008

PRO SE MOTION FOR BELATED
APPEAL [CIRCUIT COURT OF
PULASKI COUNTY, CR 2004-3375,
HON. JOHN W. LANGSTON, JUDGE]

MOTION DENIED.

PER CURIAM

Petitioner Eilert Bertrand was found guilty of capital murder and sentenced to life imprisonment without parole. This court affirmed the judgment. *Bertrand v. State*, 363 Ark. 422, 214 S.W.3d 822 (2005). The mandate issued on November 3, 2005.

On January 19, 2006, petitioner filed in the trial court a pro se petition for postconviction relief under Ark. R. Crim. P. 37.1, which was dismissed as untimely filed by order entered May 11, 2006. Petitioner filed in the trial court a notice of appeal as to that order on August 9, 2006. When the record was tendered to this court, our clerk correctly declined to file it because the notice of appeal was not timely filed with the circuit clerk. Petitioner then filed the pro se motion for belated appeal presently before us on December 4, 2007.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered

in accordance with Ark. R. App. P.–Civ. 4(a). If a petitioner fails to timely file a notice of appeal, he may move this court to file a belated appeal in accordance with Ark. R. App. P.–Crim. 2(e). Under Rule 2(e), it is incumbent on a petitioner to file the motion for belated appeal in a timely manner. *Bennett v. State*, 362 Ark. 411, 208 S.W.3d 775 (2005) (per curiam) (citing *Efurd v. State*, 352 Ark. 476, 101 S.W.3d 800 (2003) (per curiam)). Rule 2(e) provides that “no motion for belated appeal shall be entertained by the Supreme Court unless application has been made to the Supreme Court within eighteen (18) months of the date of entry of judgment or entry of the order denying postconviction relief from which the appeal is taken.”

Here, the order denying the petition for postconviction relief was entered on May 11, 2006, and the eighteen-month period in which to file a motion for belated appeal expired on November 11, 2007. While petitioner tendered his motion within that period, the motion was not filed within it.¹ Petitioner failed to comply with the requirements of Rule 2(e).

Moreover, the partial record before us clearly shows that the trial court correctly determined that it did not have jurisdiction to address petitioner’s Rule 37.1 petition. The unverified petition was filed marked seventy-seven days after the mandate issued. Arkansas Rule of Criminal Procedure 37.2(c) requires that a petition for postconviction relief following a direct appeal must be filed within sixty days of the date the mandate issued. The time limitations imposed in Rule 37.2(c) are jurisdictional in nature. The circuit court may not grant relief on a petition for postconviction relief which is not timely filed. *Benton v. State*, 325 Ark. 246, 925 S.W.2d 401 (1996) (per curiam).

Motion denied.

¹ Petitioner failed to submit either the filing fee or an affidavit of indigency with his motion when it was tendered. The motion was filed on the date an appropriate affidavit was received.